

1 Tomas E. Margain, Bar No. 193555  
2 DAL BON & MARGAIN  
3 28 NORTH 1ST STREET, SUITE 210  
4 SAN JOSE, CA 95113  
5 TEL (408) 297-4729  
6 FAX (408) 297-4728

7 [margainlaw@hotmail.com](mailto:margainlaw@hotmail.com)

8 Attorneys for Plaintiffs

9 Douglas M. Larsen, Bar No. 142852  
10 Travis R. Stokes, Bar No. 225122  
11 FISHMAN, LARSEN, GOLDRING AND ZEITLER  
12 7112 North Fresno Street, Suite 450  
13 Fresno, CA 93720  
14 Telephone: 559.256.5000  
15 Fax: 559.256.5005  
16 Email: [larsen@flgz.net](mailto:larsen@flgz.net)  
17 Stokes@flgz.net

18 Attorneys for Defendants and Cross-Complainant ARMANDO VARGAS,  
19 NOE VARGAS & JAVIER VARGAS

20 UNITED STATES DISTRICT COURT

21 FOR NORTHERN DISTRICT OF CALIFORNIA

22 SAN JOSE DIVISION

23 JOSE FELIPE RUIZ; CARLOS AGUILAR  
24 RIVAS; MARCELINO HERNANDEZ;  
25 ALEJANDRO AGUILAR; RAMIRO  
HERNANDEZ PARRA; SALOMON GOMEZ;  
MAURO HERNANDEZ; HERIBERTO  
PAMAZ-LUCAS; ANTONIO HERNANDEZ;  
ANTONIO GONZALES; and ALEJANDRO  
GONZALES,

Case No.: 08-CV-01804PVT

STIPULATION TO CONTINUE TRIAL  
AND PRE TRIAL DEADLINES 90 DAYS  
AND [XXXXXXXXXX] ORDER

Plaintiffs,

vs.

1 ARMANDO VARGAS; JAVIER VARGAS;  
2 NOE VARGAS; EDITH R. SAUNO;

3 Defendants  
4  
5  
6  
7

---

8 ARMANDO VARGAS  
9 Cross-Complainant

10 Vs  
11 EDITH R. SAUNO  
12 Cross-Defendant

---

13  
14  
15 The parties submit the following Stipulation, to continue the Trial and all trial setting  
16 deadlines 90 days, including discovery cut-off deadlines. This is based on events or information  
17 learned in March and April which both impacts trial setting and give the parties a realistic  
18 window to resolve the matter. As will be shown herein, events have occurred which were  
19 preconditions to beginning negotiations. A continuance would give the parties a period to  
20 attempt to resolve this dispute by scheduling a Settlement Conference with the Honorable  
21 Howard Lloyd and if a settlement cannot be reached finish up fact discovery.

22 Good cause is met for the continuance based on the following which affects every  
23 Defendant and some of the Plaintiffs:

24 1. With respect to Defendant Armando Vargas, his Chapter 7 Bankruptcy, Case No.  
25 09-56214 RLE, is ongoing and there is a stay as to him. Plaintiffs have filed an adversarial  
action and had their first Case Management Conference on March 25, 2010 in the bankruptcy

1 action. Plaintiffs' counsel has retained bankruptcy co-counsel Gregory McDonald. Both have  
 2 communicated extensively with Barry Milgrom counsel for the Chapter 7 Bankruptcy Trustee.  
 3 During those conversations, Mr. Milgrom made it clear that some of the adversarial claims  
 4 asserted are the property of the bankruptcy Estate and may not be negotiated or compromised.  
 5 As this is Plaintiffs' counsel's understanding as well, these claims are being dismissed. This will  
 6 allow the parties to begin negotiating with Defendant Vargas' bankruptcy counsel and if a  
 7 settlement is reached it will be presented to the Trustee and to the Bankruptcy Court. This has  
 8 caused a delay which was cleared up prior to the March 25, 2010 CMC. Once these claims are  
 9 dismissed, both the Chapter 7 Trustee's attorney and Defendant Vargas' bankruptcy counsel  
 have expressed a willingness to enter into settlement negotiations.

10       2. Plaintiffs learned for the first time on April 19, 2009 that Defendant JAVIER  
 11 VARGAS filed for bankruptcy protection under Chapter 7 and was granted a discharge on June 9,  
 12 2009 in the case entitled In re Javier Vargas Pena 09-51532 ASW 7. Based on the preliminary  
 13 research conducted by Plaintiffs' counsel, Plaintiffs were not listed as creditors. Moreover, it  
 14 appears that the Bankruptcy Court has jurisdiction over the scope of the discharge. Counsel for  
 15 Javier Vargas contends that whether or not Plaintiffs were listed as creditors is inconsequential.  
 16 Since Javier Vargas filed chapter 7 bankruptcy and did not have any assets, Plaintiffs (the  
 17 potential creditors) cannot execute on any potential judgment against Javier Vargas since those  
 18 claims would be discharged under the bankruptcy code and applicable case law. Javier Vargas  
 19 relies on the following cases as support for his position: *In re Beezley* (1992) 994 F.2d 1433,  
 20 1436-1437 [“...in the typical Chapter 7 case, the debtor’s failure to list a creditor does not, in and  
 21 of itself, make the creditor’s claim nondischargeable... the debt remains within the scope of the  
 22 discharge afforded by section 727. Scheduling, per se, is irrelevant.”]; *Mendiola*, 99 B.R. at 867  
 23 [since dischargeability is unaffected by scheduling in a no asset, no bar date case, “reopening the  
 24 case merely to schedule the debt is for all practical purposes a useless gesture.”]; *American  
 Standard*, 147 B.R. at 483 [of “no legal effect”]; *Stecklow*, 144 B.R. at 317 [“futile”]; *Tucker*,  
 25 143 B.R. at 334 [“unnecessary” and “unwarranted”]; *Peacock*, 139 B.R. at 422 [“pointless”];  
*Thibodeau*, 136 B.R. at 10 [“meaningless”]. A continuance will allow the parties to asses the

1 impact of this during settlement negotiations. Moreover, it would give Defendant Javier Vargas  
 2 the ability to move for a dismissal based on this.

3       4. As to Defendant NOE VARGAS, it has been represented to Plaintiffs' counsel  
 4 that he does not have any significant assets and a continuance would allow Plaintiffs' counsel to  
 5 verify this. In the event Plaintiffs' counsel discovers that Noe Vargas does not have the means  
 6 by which to satisfy a judgment, Plaintiffs will dismiss the action against him. By signing this  
 7 Stipulation granting Plaintiffs additional time to verify the financial condition of Noe Vargas, he  
 8 is not waiving his rights to assert any defense, including that he was not Plaintiffs' employer  
 9 since he did not exercise control over the nature and structure of the employment relationship  
 10 and he did not have control of the company operations or finances; rather, he merely acted as a  
 supervisor to plumbers on his crews.

11       5. As to Defendant Edith Sauno, she and Defendant Armando Vargas were litigating  
 12 issues over the ownership of three pieces of real property which were a stumbling block for any  
 13 settlement she could reach with Plaintiffs. Plaintiff recently learned, by an April 16, 2010 Notice  
 14 from Mr. Milgrom, counsel for the trustee in the Armando Vargas Bankruptcy, that the Trustee  
 15 intends to compromise claims between Sauno and Vargas. A true and correct copy of the Notice  
 16 is attached hereto as Exhibit A. Defendant Sauno will get ownership of the properties in  
 17 exchange for \$150,000.00. If the compromise if approved, this will allow Defendant Sauno to  
 finance a settlement if one can be reached.

18       6. Defendant Sauno's deposition was also timely Noticed and she is unable to be  
 19 deposed by the end of this month as she is in Mexico. A continuance will allow the deposition to  
 20 go forward.

21       7. Finally, three of the eleven Plaintiffs have moved to Mexico. As a result,  
 22 Plaintiffs' counsel cannot produce them in the United States nor do Defendants have an  
 23 opportunity to depose them. A continuance would allow the parties to complete discovery or for  
 24 Plaintiffs to move for a protective order allowing them to be deposed by videoconferencing.  
 25 Defendants will oppose such a protective order.

8. In spite of the Stipulation for a continued trial date, counsel believe that the parties should still participate in a settlement conference with Judge Lloyd that is to be completed by mid-May 2010. By that time, Plaintiffs' counsel will have had an opportunity to determine the financial status of Noe Vargas, to confirm whether a judgment can be executed with respect to Javier Vargas, and determine if the property compromise between Sauno and the Vargas Estate were approved.

**IT IS HEREBY STIPULATED** by and between the parties, through their respective counsel, as follows:

1. That the non-jury trial in this matter be continued 90 days to October 25, 2010 at 9:30 a.m..

2. Deadline Fact Discovery Cutoff . . . . . July 26, 2010
3. Expert Discovery Cutoff . . . . . July 26, 2010
4. Deadline(s) for Filing Discovery Motions . . . See Civil Local Rule 26-2
5. Last Day for Dispositive Motion Hearing . . . . 10:00 a.m. on July 27, 2010
6. Final Pretrial Conference .. 2:00 p.m. on October 19, 2010

## **FOR PLAINTIFFS**

DAL BON & MARGAIN

DATED: April 26, 2010

By: //s// Tomas E. Margain

---

**Tomas E. Margain**

**FOR DEFENDANTS  
ARMANDO  
VARGAS; JAVIER  
VARGAS; NOE  
VARGAS**

## **FISHMAN, LARSEN, GOLDRING AND ZEITLER**

**WIRGIN**  
April 26, 2010

By: //s// Travis Stokes

Travis Stokes

**FOR DEFENDANT  
EDITH SAUNO**

DATED: April 26, 2010

By: //s// Amy Carlson  
**Amy Carlson**

## ORDER

Pursuant to the Stipulation of the Parties and Good Cause shown the trial in this matter and pretrial cutoffs are continued as follows:

1. That the non-jury trial in this matter be continued 90 days to October 25, 2010 at  
9:30 a.m..

2. Deadline Fact Discovery Cutoff . . . . . July 26, 2010

3. Expert Discovery Cutoff . . . . . July 26, 2010

4. Deadline(s) for Filing Discovery Motions . . See Civil Local Rule 26-2

5. Last Day for Dispositive Motion Hearing . . . 10:00 a.m. on July 27, 2010

6. Final Pretrial Conference .. 2:00 p.m. on October 19, 2010

IT IS HEREBY ORDERED that the parties shall comply with the Standing Order for Civil Practice in Cases Assigned for All Purposes to Magistrate Judge Patricia V. Trumbull (Rev. June 2008), a copy of which is available from the clerk of the court,<sup>2</sup> with regard to the timing and content of the Joint Pretrial Statement, and all other pretrial submissions.

## **IT IS SO ORDERED**

DATED: April 26, 2010

Patricia V. Trumplk

---

**Hon. Patricia V. Trumbull  
UNITED STATES MAGISTRATE JUDGE**